



Control of Pollution Act 1974

1974 CHAPTER 40

PART VI

MISCELLANEOUS AND GENERAL

General

104 Orders and regulations.

- (1) Any power conferred by this Act ^{F1}... to make an order or regulations—
- (a) includes power to make different provision by the order or regulations for different circumstances and to include in the order or regulations such incidental, supplemental and transitional provisions as the person making the order or regulations considers appropriate in connection with the order or regulations; and
 - (b) shall be exercisable by statutory instrument except in the case of the powers conferred by section 97 of this Act;
- and any statutory instrument made by virtue of this subsection, except an instrument containing only [^{F2}regulations made by virtue of section 18 of this Act or] an order made by virtue of [^{F3}section 33(4), 44(5), 52, 53 or 109(2)] [^{F3}section 44(5) or 109(2)] of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) No [^{F4}regulations shall be made by virtue of section 18 of this Act and no] order shall be made by virtue of section 52 [^{F5}or 53] of this Act unless a draft of the [^{F6}regulations or] order has been approved by a resolution of each House of Parliament.
- [^{F7}(3) It shall be the duty of the Secretary of State, before he makes any regulations in pursuance of section 31(5) of this Act—
- (a) to publish in the London Gazette and in at least one newspaper circulating in the area in question a copy of the proposed regulations and a notice specifying—

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- (i) A period of not less than twenty-eight days, beginning with the date on which the notice is first published, within which objections to the proposed regulations may be made, and
- (ii) the person to whom such objections may be made; and
- (b) to consider any objections to the proposed regulations which are made within that period and, if such an objection is so made by a prescribed person and is not withdrawn, to cause a local inquiry to be held in pursuance of section 96 of this Act with respect to the proposed regulations;

and the Secretary of State may, after considering any such objections as are mentioned in paragraph (b) of this subsection and the report of any person appointed to hold a local inquiry with respect to the proposed regulations, make the regulations either in the form in which a copy of them was published in pursuance of this subsection or in that form with such modifications as he considers appropriate.]

Textual Amendments

- F1** Words in s. 104(1) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 16\(9\)\(a\)\(i\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch. Words in s. 104(1) omitted (E.W.) (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 13 para. 15\(2\)](#); S.I. 2015/1732, art. 2(f)
- F2** Words in s. 104(1) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 16\(9\)\(a\)\(ii\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.
- F3** Words in s. 104(1) substituted (S.) by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 168, 189(4)–(10), 190, 193(1), Sch. 23 para. 7, Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), [58](#)
- F4** Words in s. 104(2) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 16\(9\)\(b\)\(i\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.
- F5** Words repealed (S.) by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, [Sch. 27 Pt. I](#)
- F6** Words in s. 104(2) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 16\(9\)\(b\)\(ii\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.
- F7** S. 104(3) repealed (S.) by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, [Sch. 27 Pt. I](#)

105 Interpretation etc—general. **E+W**

(1) In this Act—

[^{F8} “the Alkali Act” means the ^{M1}Alkali, &c. Works Regulation Act 1906;]
“county” [^{F9} county borough] and “district”, except in relation to Scotland, have the same meanings as in the ^{M2}Local Government Act 1972;

“mine” and “quarry” have the same meanings as in the ^{M3}Mines and Quarries Act 1954;

“modifications” includes additions, omissions and amendments and “modify” and cognate expressions shall be construed accordingly;

“notice” means notice in writing;

“owner”, except in relation to Scotland, means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent;

“premises” includes land;

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“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State;

[^{F10}“road” (except where the context otherwise requires) has the same meaning as in the [^{F11}Part IV of the New Roads and Street Works Act 1991]:

“roads authority” has the same meaning as in the Roads (Scotland) Act 1984;][^{F12}“SEPA” means the Scottish Environment Protection Agency;]

“trade effluent” includes any liquid (either with or without particles of matter in suspension in it) which is discharged from premises used for carrying on any trade or industry, other than surface water and domestic sewage, and for the purposes of this definition on any premises wholly or mainly used (whether for profit or not) for agricultural or horticultural purposes or for scientific research or experiment shall be deemed to be premises used for carrying on a trade; and

“vessel” includes a hovercraft within the meaning of the ^{M4}Hovercraft Act 1968.

- (2) Except so far as this Act expressly provides otherwise and subject to the provisions of [^{F13}section 18 of the ^{M5}Interpretation Act 1978] (which relates to offences under two or more laws), nothing in this Act—
- confers a right of action in any civil proceedings (other than the proceedings for the recovery of a fine) in respect of any contravention of this Act or an instrument made in pursuance of this Act;
 - Affects any restriction imposed by or under any other enactment, whether public, local or private; or
 - derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Act.
- (3) In so far as any interest in Crown land is not an interest belonging to Her Majesty or a Crown interest or a Duchy interest, this Act shall apply to the land as if it were not Crown land; and expressions used in this subsection and [^{F14}subsection (1) of section 293 of the Town and Country Planning Act 1990] or, in relation to Scotland, [^{F15}subsections (1) to (3) of section 242 of the Town and Country Planning (Scotland) Act 1997] have the same meanings in this subsection as in that subsection.
- (4) References in this Act to any enactment are references to it as amended by or under any other enactment.

Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

- F8** Definition repealed (*prosp.*) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), ss. 162(2), 164(3), [Sch. 16 Pt. I](#)
- F9** Words in s. 105(1) inserted (1.4.1996) by 1994 c. 19, s. 22(3), [Sch. 9 para. 10\(5\)](#) (with [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1996/396, art. 3](#)
- F10** Definitions inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 74\(6\)](#)
- F11** Words in s. 105(1) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22\)](#), s. 168(1), [Sch. 8 Pt. IV para. 105](#); [S.I. 1992/2990, art. 2\(2\)](#), [Sch. 2](#).
- F12** S. 105(1): definition of “SEPA” inserted (1.4.1996) by 1995 c. 25, s. 120(1), [Sch. 22 para. 29\(35\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)

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- F13** Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 25(2)
- F14** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, Sch. 2 para. 31(2)
- F15** Words in s. 105(3) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2, para. 23(2)

Modifications etc. (not altering text)

- C8** S. 105(3) amended (E.W.) (25.9.1991) by Atomic Weapons Establishment Act 1991 (c. 46), ss. 3, 6(2), Sch. para. 8(2)

Marginal Citations

- M1** 1906 c. 14.
- M2** 1972 c. 70.
- M3** 1954 c. 70.
- M4** 1968 c. 59.
- M5** 1978 c. 30.

105 Interpretation etc—general. S

(1) In this Act—

^{F22} ...

“county” [^{F23} county borough] and “district”, except in relation to Scotland, have the same meanings as in the ^{M7}Local Government Act 1972;

“mine” and “quarry” have the same meanings as in the ^{M8}Mines and Quarries Act 1954;

“modifications” includes additions, omissions and amendments and “modify” and cognate expressions shall be construed accordingly;

“notice” means notice in writing;

“owner”, except in relation to Scotland, means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent;

“premises” includes land;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Secretary of State;

[^{F24}“road” (except where the context otherwise requires) has the same meaning as in the [^{F25}Part IV of the New Roads and Street Works Act 1991]:

“roads authority” has the same meaning as in the Roads (Scotland) Act 1984;][^{F26} “SEPA” means the Scottish Environment Protection Agency;]

^{F27}

.....
“vessel” includes a hovercraft within the meaning of the ^{M9}Hovercraft Act 1968.

(2) Except so far as this Act expressly provides otherwise and subject to the provisions of [^{F28}section 18 of the ^{M10}Interpretation Act 1978] (which relates to offences under two or more laws), nothing in this Act—

- (a) confers a right of action in any civil proceedings (other than the proceedings for the recovery of a fine) in respect of any contravention of this Act or an instrument made in pursuance of this Act;

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- (b) Affects any restriction imposed by or under any other enactment, whether public, local or private [^{F29}or by or under any Act of the Scottish Parliament]; or
- (c) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Act.

[^{F30}(3) Subject to subsections (3A) to (3D) below, this Act shall bind the Crown.

(3A) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the Court of Session may, on the application of—

- (a) the Scottish Environment Protection Agency; or
- (b) any other public or local authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3B) Notwithstanding anything in subsection (3A) above, any provision made by or under this Act shall apply to persons in the public service of the Crown as it applies to other persons.

(3C) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this subsection “Crown premises” means premises held or used by or on behalf of the Crown.

(3D) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity.]

(4) References in this Act to any enactment are references to it as amended by or under any other enactment.

Extent Information

E2 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F22 Words in s. 105(1) repealed (1.4.2015 for S.) by Environmental Protection Act 1990 (c. 43), s. 164(3), **Sch. 16 Pt. I**; S.S.I. 2015/72, art. 2(1)(b)

F23 Words in s. 105(1) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 10(5)** (with Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, **art. 3**

F24 Definitions inserted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 74(6)**

F25 Words in s. 105(1) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22), s. 168(1), **Sch. 8 Pt. IV para. 105**; S.I. 1992/2990, art. 2(2), **Sch. 2**.

F26 S. 105(1): definition of “SEPA” inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(35)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F27 Words in s. 105(1) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 16(10)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F28 Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 25(2)

F29 Words in s. 105(2)(b) added (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 39(4)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F30 S. 105(3)(3A)(3B)(3C)(3D) substituted (S.) (8.4.1998) for s. 105(3) by 1995 c. 25, s. 116, **Sch. 21 Pt. II para. 4** (with ss. 7(6), 115, 117); S.I. 1998/781, **art. 2** (subject to transitional provisions in art. 3)

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Modifications etc. (not altering text)

C10 S. 105(3C): certain functions made exercisable by the Scottish Ministers concurrently with the Minister (1.7.1999) by S.I. 1999/1750, arts. 1(1), 3, **Sch. 2** (with art. 7)

Marginal Citations

M7 1972 c. 70.

M8 1954 c. 70.

M9 1968 c. 59.

M10 1978 c. 30.

106 General application to Scotland.

(1) The provisions of this section shall, in addition to any express provision for the application to Scotland of any provision of this Act, have effect for the general application of this Act to Scotland.

^{F16}(2)

[^{F17}(3) In this Act “region”, “district”, “regional council”, “islands council” and “district council” have respectively the same meanings as in the ^{M6}Local Government (Scotland) Act 1973.]

[^{F18}(4) Any reference in this Act to a highway shall, unless the contrary intention appears, include a reference to any public right of way.]

(5) Any question which is required by any provision of this Act to be determined by arbitration shall be determined by a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties.

(6) For any reference in this Act to a magistrates’ court there shall be substituted a reference to the sheriff.

^{F19}(7)

(8) For any reference in this Act to the London Gazette there shall be substituted a reference to the Edinburgh Gazette.

(9) In this Act “owner” means the person for the time being entitled to receive or who would, if the same were let, be entitled to receive, the rents of the premises in connection with which the word is used and includes a trustee, factor, tutor or curator, and, in the case of public or municipal property, includes the persons to whom the management thereof is entrusted.

Textual Amendments

F16 S. 106(2) repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F17 S. 106(3) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(2), **Sch. 14**; S.I. 1996/323, art. 4(1)(d), **Sch. 2**

F18 S. 106(4) repealed (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), Sch. 9 para. 74(7), **Sch. 11**

F19 S. 106(7) repealed (S.) (1.10.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), s. 128(2), **Sch. 3 Pt. 1** (with s. 127); S.S.I. 2009/319, art. 2(a), Sch. 1

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Marginal Citations

M6 1973 c. 65.

107 Application to Isles of Scilly.

This Act shall have effect in its application to the Isles of Scilly with such modifications as the Secretary of State may by order specify, and the Secretary of State may by order vary or revoke any order previously made in pursuance of this section.

Modifications etc. (not altering text)

C9 S. 107 extended (16.7.1991) by [Control of Pollution \(Amendment\) Act 1989 \(c. 14, SIF 46:4\), s. 11\(3\)](#); [S.I. 1991/1618, art. 2\(a\)](#)

108 Minor and consequential amendments of enactments, and repeals.

- ^{X1}(1) The enactments specified in Schedule 3 to this Act shall have effect subject to the amendments there specified (which are minor amendments and amendments consequential on provisions of this Act).
- ^{X1}(2) The enactments mentioned in the first and second columns of Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) The Secretary of State may by order repeal or amend any provision of any local Act passed before this Act (including an Act confirming a provisional order) or of any order or other instrument made under an Act so passed if it appears to him that the provision is inconsistent with, or has become unnecessary or requires alteration in consequence of, any provision of this Act or corresponds to any provision repealed by this Act or relates to trade effluent.

Editorial Information

X1 The text of ss. 99, 108(1)(2) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

109 Short title, commencement and extent.

- (1) This Act may be cited as the Control of Pollution Act 1974.
- (2) This Act shall come into force on such day as the Secretary of State may by order appoint; and—
- (a) without prejudice to the generality of section 104(1)(a) of this Act, different days may be appointed in pursuance of this subsection for different provisions of this Act and for such different purposes of the same provision as may be specified in the order;
- (b) Any provision appointing a day in pursuance of this subsection may be revoked or varied by an order made by the Secretary of State which comes into force before that day.

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(3) This Act, except sections ^{F20}... ^{F21}... 101 and this section, does not extend to Northern Ireland.

Subordinate Legislation Made

P1 Power of appointment conferred by s. 109(2) partly exercised by [S.I. 1974/2039](#), 2169, 1975/230, 2118, 1976/731, 956, 1080, 1977/336, 476, 1587, 2164, 1978/816, 954, 1981/196, 1982/624, 1983/1175, 1984/853, 1985/70, 1988/818

S. 109(2) power partly exercised: 31. 5. 1991 appointed for s. 108(2) and Sch. 4 (so far as it concerns the repeal of ss. 25(1)(c)(4) and 26(2)(4)(7)(8)(9) of the Rivers (Prevention of Pollution) (Scotland) Act 1951) by [S.I. 1991/1173](#)

Textual Amendments

F20 Words in s.109(3) repealed (27.8.1993) by [1993 c. 11](#), ss. 67(3), 68(2), [Sch. 6](#)

F21 Words in s. 109(3) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

Status:

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Changes to legislation:

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